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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
LEFF, STEVEN N	
ART UNIT	**PAPER NUMBER**
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/777,029	KORNELY ET AL.	
	Examiner	Art Unit	
	Steven Leff	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on 12/7/06

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-21 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 2/11/04 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 22-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on December 7, 2006.

Specification

The disclosure is objected to because of the following informalities: Consistent proper identification of trademarks should be maintained throughout the specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-10, and 12-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
    - With respect specifically to claims 1, 12, 14, and 16 which recite "substantially to completion." It is unclear as to what "substantially to completion" is meant to represent in the context of cooking a food product. What could be termed "substantially to completion" for the food items to one person, could be over-cooked or under-cooked to another person. It is not clear in the claims the degree of cooking the foodstuffs.
    - With respect specifically to claims 1, 3 and 10, which recite "designed to be". It is unclear as to how the foodstuffs are "designed" to be cooked. For example, the food could be produced to be cooked based upon the specific type of food, the size, the arrangement of the food within the package, the degree of pre-cooking, etc.
    - With respect to claim 3 and 20, it is unclear as to whether the foodstuffs are cooked in the package in the hot oil, or if the foodstuffs are removed from the package prior to cooking in the hot oil.

- Regarding claims 7 and 19, the recitation of a selection from a group of elements in a claim should comply with accepted U.S. Patent practice with regard to the recitation of Markush grouping of claim elements. Phrases using "one of" are open sets, and should recite elements in the alternative (i.e. "comprising A, B, C or D"), whereas closed sets ("consisting of") should recite elements as "selected from the group consisting of A, B, C and D."
- With respect to claim 13, it is unclear as to whether the "different foodstuffs" are to be "delivered" to be weighed as a component of the "first quantity" as is recited in claim 11, or if there are actually two or more foodstuffs being weighed being delivered to be weighed.
- With respect to claim 21, it is unclear as to when the foodstuffs are removed from the package. For instance, the food could be removed prior to or after cooking.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1, 5-7, 9-10, 16, 18, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Melnick. (3563768)

  Regarding claims 1, 5-7, 9-10, 16, 18, 19, and 21, Melnick teaches a packaged food product for heating and consumption. Specifically, with respect to claims 5, and 6, Melnick teach a packaged food product containing "foods of gross particulate size." (col. 9 line 20+) Regarding claims 1, and 16, Melnick continues by teaching a first food composition which is a dry soup base and a second different food adjunct, where "the amount of said soup base and of said adjunct...being such as to permit their combination with a predetermined quantity of hot water to form a soup that is ready for consumption without cooking." (col. 9 line 26+)

With respect to claims 7, 18, and 19 Melnick teaches that the two food compositions share the same characteristic in that they are both in particulate form, However, the first composition has the characteristic that it is "less than 2 mm." in particulate size (col. 3 line 28+) and the second composition has the characteristic that it is "less than 5 mm" (col. 4 line 3+) in particulate size.

Regarding claims 9, 10, Melnick teaches in example 5, the combination of individual components, which are measured in parts per weight, where the parts per weight and thus the predetermined component weights are different from each other.

With respect to claim 21, although Melnick does not specifically teach removing the foodstuffs from the package, Melnick is specifically drawn to the packaging of food and thus Melnick inherently teaches that the food in the package is to be consumed and thus would further teach the limitation of removing the foodstuffs from the package.

Therefore Melnick teaches all of the limitations with regards to claims 1, 5-7, 9-10, 16, 19, and 21.

- Claims 1-10, and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hazell et al. (6395320)

Regarding claims 1-10, and 16-21, Hazell et al. teach a packaged food product for heating and consumption. Specifically, regarding claims 1, 3-4, 9, 10, and 16, and 20, Hazell et al. teach a first food composition, which is a pasta sauce and comprises 75% of a jar with a standard head space of 1.5 cm., and a second composition, which is an olive oil and vegetables mix which comprises 25% of the jars volume, which are packaged together for cooking. "The first and second food compositions...are packaged in the same container space, the said components being either in direct contact with one another" or separated by an edible layer, (col. 5 line 18+) as is recited in claims 4, and 17. Further, with respect to claims 5, 7, and 19 "the vegetable oil and vegetable pieces are decanted and fried, prior to addition of the sauce concentrate, thereby achieving improved organoleptic properties." (abstract) Alternatively, as is recited in claims 6, and 8, the first and second food components could share the same characteristic in the instance where the sauce has been mixed but not previously cooked and the vegetables are "raw or blanched." (col. 3 line 33+)

With respect to claims 2, 16 and 18, although Hazell et al. does not explicitly teach that the foodstuffs are "appetizers" or a "single serving", the word "appetizer" and

phrase "single serving" represent food amounts of varying degrees, and types, which are dependant upon various factors, for example the person consuming the product. Therefore, Katz et al. inherently teaches that the foodstuffs are "appetizers" or a "single serving".

With respect to claim 21, although Hazell et al. do not specifically teach removing the foodstuffs from the package, Hazell et al. is specifically drawn to the packaging of food products, and the cooking of those foods. Therefore, Hazell et al. inherently that the food in the package is to be consumed and thus would further teach the limitation of removing the foodstuffs from the package in order to be consumed.

Therefore, regarding claims 1-10 and 16-21, Hazell et al. teach all of the limitations.

- Claims 1-10 and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Katz et al. (3851574)

Regarding claims 1-10 and 16-21, Katz et al. teach a container for cooking flavored popcorn. Specifically with respect to claims 1, and 16, Katz et al. teaches in example 1 first and second foodstuffs, of different compositions, (col. 5 line 41+) and weights, which are to be cooked together for "2.5 minutes to produce the popped and coated kernels." (col. 6 line 6+) Regarding claims 4 and 17, Katz et al. teaches that the foodstuffs are commingled in "an individual container." (col. 5 line 40+) With respect to claims 5, 6, 8, 9, and 18, and 19,Katz et al. continues by teaching, the cooking of a first foodstuffs with the characteristic of being 14 grams of uncooked popcorn, and further teaches the cooking of additional previously uncooked foodstuffs, for example .25 grams of powdered cheese flavor, and 4 grams of shortening, in an individual container. (col. 5 line 40) All of the individual components would have different salt contents, or sizes as is recited in claims 7 and 19. Regarding claim 10, example 1 further teaches additional foodstuffs within the container to be cooker during cooking. With respect to claims 3, and 20 Katz et al. further teach that among the various shortenings that can be used are any of the well known edible animal/vegetable oils or fats," (col. 4 line 33+) within the cooking container thus producing "hot oil".

Regarding claims 2, 16 and 18, although Katz et al. does not explicitly teach that the foodstuffs are "appetizers" or a "single serving", the word "appetizer" and phrase "single serving" represent food amounts of varying degrees, and types, which are

dependant upon various factors, for example the person consuming the product. Therefore, Katz et al. inherently teaches that the foodstuffs are "appetizers" or a "single serving".

With respect to claim 21, although Katz et al. does not specifically teach removing the foodstuffs from the package, Katz et al. is specifically drawn to the packaging of food products, and the cooking of those foods. Therefore, Katz et al. inherently that the food in the package is to be consumed and thus would further teach the limitation of removing the foodstuffs from the package in order to be consumed.

Therefore, regarding claims 1-10 and 16-21, Katz et al. teach all of the limitations.

- Claims 1-10, and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wright. (6488973)

With respect to claims 1-10, and 16-21, Wright teaches a method of packaging foodstuffs. Specifically with respect to claims 1, 5-8, 10, 16, and 18, Wright teaches a first foodstuff, which is a "raw protein", and second foodstuffs of a different composition, such as "a raw or an only partially cooked or blanched vegetable portion." (col. 1 line 43+) where "the blanched vegetables are only partially cooked so that the time remaining to complete cooking of the vegetables is approximately the same as the time required to cook the raw protein product." (col. 1 line 61+) The different foodstuffs are commingled in a cooking pouch, as is recited in claims 4, and 17 and the package may optionally include a sauce. (col. 1 line 42+)

Regarding claim 2, 16, and 18, although Wright does not specifically describe the foodstuffs as "appetizers" or "single servings", Wright does teach different types of foodstuffs, and differently sized portions (col. 3 line 59+), where "the cooking time will vary according to the cooking process used and thickness of the raw protein." (col. 3 line 45+) Further, the word "appetizer" and phrase "single serving" represents food amounts of varying degrees, and types, which are dependant upon various factors, for example the person consuming the product. Therefore, Wright inherently teaches that the foodstuffs are appetizers.

With respect to claims 3, and 20 since the composition of Wright meets the limitations of the claims 1 and 16, the composition would inherently be designed to be cooked in hot oil.

Regarding claims 9, and 19 Wright teaches that "the cooking time will vary according to the cooking process used and thickness of the raw protein," (col. 3 line 45+) and that "the cooking pouch will have a total package weight of approximately 2.3 to eight ounces." (col. 3 line 23+) Further, Wright teaches that "the pouch could include a two ounce raw fish filet, two ounces of sauce and 1.5 ounces of raw or blanched vegetables which would take approximately ten to fifteen minutes to cook in a preheated oven, whereas a three ounce raw fish filet, two ounces sauce and two ounces raw or blanched vegetables would take approximately fifteen to twenty minutes to cook in a preheated oven." (col. 3 line 59+) Therefore, Wright positively teaches all the limitations of claims 9 and 19.

With respect to claim 21, Wright is specifically drawn to the packaging of food products, and the cooking of those foods. Therefore, Wright inherently teaches that the food in the package is to be consumed and thus would further teach the limitation of removing the foodstuffs from the package in order to be consumed.

Therefore with regards to claims 1-10, and 16-21 Wright teaches all of the limitations.

- Claims 11, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Jordan et al. (4428179)

With respect to claims 11, and 13, Jordan et al. teach "a method for filling a package with a predetermined weight of irregularly shaped-different sized items. The method contemplates providing to a computer first weight information relating to the weight of a first quantity of the items in the package less than the predetermined weight. Second weight information relating to the weight of additional ones of the items initially held in a plurality of holding means is also provided to the computer." (col. 1 line 53+) The method further contemplates selecting which of the holding means hold those additional items which, when combined with the first quantity of items, most nearly equals the predetermined weight, and transferring the additional items to the package on command from the computer," (col. 1 line 62+) as is recited in claim 15.

Therefore Jordan et al. teach all of the limitation regarding claims 11, 13, and 15.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

- Claims 11-15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright. (6488973)

  Wright is taken as above.

  With respect specifically to claims 11-15, although Wright does not teach the general process of delivering a quantity of food to a weighing area, Wright does teach that "the cooking time will vary according to the cooking process used and thickness of the raw protein," (col. 3 line 45+) and that the "the cooking pouch will have a total package weight of approximately 2.3 to eight ounces." (col. 3 line 23+) Further, "the pouch could include a two ounce raw fish filet, two ounces of sauce and 1.5 ounces of raw or blanched vegetables which would take approximately ten to fifteen minutes to cook in a preheated oven, whereas a three ounce raw fish filet, two ounces sauce and two ounces raw or blanched vegetables would take approximately fifteen to twenty minutes to cook in a preheated oven." (col. 3 line 59+)

  Regarding claims 11-15, although Wright does not recite the process of delivering a quantity of food to a weighing area, Wright does teach specific weight values for the individual components as well as the overall package weight. Therefore, one of ordinary skill in the art would be expected to reasonably conclude that a step of weighing the components would thus be necessary to achieve a total package weight of approximately "2.3 to eight ounces." (col. 3 line 23+)

"In considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." (see MPEP 2144.04)

Further, although the reference does not teach the step of delivering the food and weighing, Wright does state that "the blanched vegetables are only partially cooked so that the time remaining to complete cooking of the vegetables is approximately the same as the time required to cook the raw protein product," (col. 1 line 61+) Although the reference did not disclose how the foods are weighed, the selection of a known method based on its suitability for its intended use supports a prima facie obviousness determination. (see MPEP 2144.07) Further the "mere duplication of parts has no patentable significance unless a new and unexpected result is produced." (see MPEP 2144.04 VI B) The method of or recital of weighing the food components would not be expected to change the overall product or the packages ability to cook different foodstuffs, for applicant's and Wright's intended function of cooking different food materials within a non-segmented package for a single cooking time.

Regarding claim 12, although Wright does not teach labeling the package with cook times, Wright does teach that "the pouch itself contains a seal area which is of sufficient width to facilitate printing of "THIS SIDE UP FOR COOKING" directly on the seal area. (col. 2 line 28+) "Matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art." (see MPEP 2144.04 I) Further, one of ordinary skill in the art would have been motivated to provide packaged food products with predetermined amounts of food i.e. weights, in order to provide the consumer with measured serving portions and cooking information.

Therefore, with respect to claims 11-15 it would have been obvious to one of ordinary skill in the art at the of the invention by the applicant to have produced a package which cooks different food materials, within a non-segmented package for a single cooking time in order to make the packaging and cooking of frozen meals more cost effective and convenient.

Allowable Subject Matter

There is no allowable subject matter at this time

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 5736186, 5370895, 4328254, 3873735, 3615646, 6183789, 6063423, 5861184, 5059436, 4911938, 4890439, 3808342, 3718481, 3615711, 2801930, 2752252, 2555584, 5404797, re33712, 4502372, 3235390, 3228776. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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